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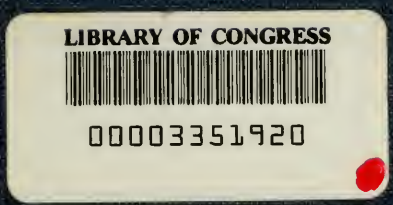

WILLIAM PINKNEY

Lawyer Statesman Diplomat

ADDRESS OF

HENRY FLANDERS, Esq.

Before the

New Jersey State Bar Association

June 16, 1906

WILLIAM PINKNEY

Mr. Chairman and Gentlemen of the Bar Association:

William Pinkney, the subject of my address to-day, was doubtless the most famous lawyer and forensic orator of his day. And it was the day of great men.

His learning was profound, his logic close woven, and his powers of persuasion rarely equalled. His career was a varied one. It embraced law, legislation and diplomacy. It began early, and closed before the advances of age had impaired or even touched his imperial intellect. He died in his fifty-eighth year, in the full splendor of his renown, when his discussion with the British Foreign Office on those questions of international law affecting neutral rights had given him a fame unsurpassed in our diplomatic annals; when, too, his arguments in the Supreme Court of the United States on great constitutional and international questions had established his supremacy in that tribunal; when, too, in Congress, he had made his memorable speech in the House on the treaty making power, and in the Senate on the Missouri Compromise, the greatest speech, Henry Clay declared, that he had ever heard in that body.

The leading incidents of such a life are interesting and instructive, and before an assemblage of lawyers like this, will be considered, I hope, worth rehearsing, even though inadequately.

Mr. Pinkney was born at Annapolis, Md., March 17th, 1764. His father, we are told, was an Englishman of strong convictions and resolute character. His mother is described as a woman of vigorous understanding and tender sensibilities. He acquired a good English and classical education at King William's Academy, afterwards St. John's College, Annapolis, Maryland, his native town.

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He was twelve years old at the time of the Declaration of Independence, and even at that early age was already a sturdy American, and as a boy espoused the cause of the Colonies with fervor. His father, on the other hand, was an unflinching Tory, and in consequence was involved in very distressing troubles. During the war his person was seized, his property confiscated, and his family impoverished.

The close of the war found young Pinkney a clerk in a drug store at Baltimore. He had joined a debating society of the town, and the society had announced a public debate; Pinkney being one of the champions. The forthcoming debate was much talked of and created as much expectancy in the little community as a new opera would at the present day, when Baltimore has become an important city.

It so happened that Samuel Chase, a distinguished lawyer of Maryland, a signer of the Declaration of Independence, and after the adoption of the Federal Constitution a Justice of the Supreme Court of the United States, was in Baltimore that evening, and having nothing to occupy his attention,—Baltimore at that time being not much more than a large village,—he went to hear the debate. Mr. Chase was delighted with Pinkney. He made inquiries about him, sought him out and advised him by all means to study for the bar. Young Pinkney told him that that was impossible; that the war had ruined his father and his family; and that as one of the children of poverty he must for the present earn his daily bread by his daily labor. Whereupon Mr. Chase invited him to come to Annapolis, offered him the use of his office and books and a seat at his table until he was prepared for the bar. He accepted this offer, gave up his clerkship, went to Annapolis, and devoted himself with ardor to the study of his future profession. In 1786 he was admitted to the bar.

He came to it especially well grounded in the law of real property and special pleading. He began practice in

Harford county. I have been able to obtain but little information as to his first attempts as a lawyer. I suspect his progress was more or less slow. There could not have been much litigation, except of an obscure kind, one hundred years ago, in a country district like that. However, in three years after coming to the bar he married a sister of Commodore Rogers, one of our distinguished naval heroes, which would imply some degree of prosperity. He had, too, become known to the people of the county and they elected him a member of the Maryland Convention, which was called to ratify the Federal Constitution. The same year (1788) he was elected to the House of Delegates, and remained a member of that body four years, until 1792, when he removed to Annapolis.

When he established himself at Annapolis, which at that time was the political and judicial metropolis of Maryland, Pinkney was twenty-eight years old. He then had in outline the physical and mental qualities that later on became a developed and finished picture of the man. His figure was large, manly and handsome and he had about him that indefinable air of distinction which arrests attention, and which characterized his appearance until the day of his death. He had, too, an easy flow of natural eloquence, a melodious voice, and his choice of words was instinctively felicitous. With learning, with eloquence, with ambition, with high courage, and indomitable will, he took at a bound a foremost place at the Maryland Bar. He was in the full tide of professional success, when, in 1796, Washington appointed him conjointly with Christopher Gore, the leader of the Boston Bar, a Commissioner at London under the Jay Treaty, to ascertain what claims, and to what extent England was liable to the United States by reason of her alleged violation of the Treaty of Peace (1783) and by reason of her later spoliations of American commerce.

In pursuance of his official duties Pinkney remained in England eight years. Questions of the gravest import were

discussed with the British authorities during this long period; questions involving the interpretation of the Treaty of Peace (1783); questions relating to contraband, domicile, blockade and prize; and it is conceded that in the discussion of these questions Pinkney displayed an ability, a knowledge of international law, a power of reasoning and illustration that did honor not only to himself, but reflected honor upon his country, and the English Government, by reason of these prolonged discussions, finally agreed to pay, and did promptly pay, the United States, or its citizens, a sum aggregating over eleven million dollars.

While engaged in his official labors in England, Pinkney found, owing to the delays constantly interposed by the British Ministry, a good deal of leisure, which he devoted to an arduous review and study of the law, and the art of eloquence as well. He also, as occasion permitted, frequented the Houses of Parliament and listened to the debates,—to such orators as Fox, Pitt, Burke, Sheridan,—and was likewise an interested visitor to the courts of law and at the theatres.

He does not seem to have heard Erskine except in the House of Commons and was disappointed in him, as he was in Mrs. Siddons, the queen of the tragic stage, as well as in Fox. He thought Fox an orator and a reasoner, but in spite of nature. He awarded the palm to Pitt. In debate he regarded him as a past master; his logic so close and cogent; his eloquence so illustrative, so pertinent, and so effective.

Pinkney returned to America in 1804, after an absence of eight years, but returned a more profound lawyer and a more cultured orator than when he left our shores. It was his boast that he and Chief Justice Parsons, of Massachusetts, were the only American lawyers who had thoroughly mastered Coke on Littleton. He now settled at Baltimore. Business flowed in on him. His practice was very varied

and very lucrative, but he always prized renown more than money. That canker never soiled his soul. Sordidness and greediness were foreign and repugnant to his nature. His application to the law and to the practice of eloquence, now that he was free from public duties, was intense, and his powers of exposition and illustration were increased by his constant habit of extempore speaking in private.

Mr. Pinkney pursued fame with ardor. His soul was athirst for it, and he was willing to pay the price; to live laborious days and nights. He achieved it by the strenuous and unremitting exercise of his intellectual faculties. When he became the undisputed leader of the American Bar, he is reported to have said that whenever that leadership was questioned or whenever there was even the suggestion of a doubt about it, that moment he wished to die. He lived, and continued to live until the day of his death, amid the incense, the admiration and applause of listening courts and listening senates, and without these visible evidences of his power he preferred to bear no life.

And yet he had his weaknesses. He affected to be a man of the world, as if law and eloquence were rather by-products, as the manufacturers say, and not, as they were, the chief and absorbing business of his life. He dressed in the height of fashion, and he addressed the court and took notes during a trial wearing perfectly fitting amber colored gloves. His manner had an air of hauteur. To the older lawyers, especially to those who stood in the relation of rivals, his attitude was somewhat lofty. To the young men of the bar, however, he was uniformly kind and they regarded him with admiration and affection. He liked his friends to think that he was much interested in the ladies and a worshipper at the shrine of beauty.

The late David Paul Brown, who was also a man of affectations, once told me that on one occasion he went to Baltimore to consult Mr. Pinkney. He called at his office.

and sending in his name to the inner office occupied by the great man, he was immediately received and thus addressed: "I am glad to see you, Mr. Brown, but you come at a most inopportune moment. I was just exchanging glances with a very pretty French woman at the opposite window, and I fear your advent has spoiled a romance."

All this, however, was mere affectation and was so appreciated by Mr. Brown. Mr. Pinkney was the devoted husband of a devoted wife, and neither coveted any other man's possessions nor disturbed any other man's domestic peace. His foibles, like spots on the sun, which the astronomers tell us neither obscure its light nor diminish its heat, in no wise impaired the splendor of his intellect, nor the inherent temper of his rectitude.

In 1805 he was appointed Attorney General of Maryland and in the following year, conjointly with Mr. Monroe, he was sent to London by Mr. Jefferson to treat with the English government on the pressing and threatening questions growing out of the continued, insolent and wanton aggressions of England on our rights as neutrals. This Commission bore date May 17, 1806.

Lord Auckland and Lord Holland were deputed by the Foreign Office to meet them and conduct the negotiations on behalf of the British government. The result of the negotiations was a treaty signed by the respective envoys on the last day of December, 1806. Monroe and Pinkney did the best they could; they adjusted minor differences, but on the great questions of search and impressment, of paper blockade, of lawless capture of neutral vessels, they could obtain no real concessions and these seeds of future and inevitable war were left to germinate. Mr. Jefferson declined to submit the treaty to the Senate.

Mr. Monroe returned home (1807), leaving Mr. Pinkney sole minister; the administration instructing him to quit

the scene when he should conclude that his presence in England was no longer useful. His position in the hostile atmosphere of London was difficult and delicate. His extraordinary abilities and high character were respected and admired, but the progress of his negotiation, at all stages of it during the four following years, was as ineffectual as it was exasperating. His labors were in vain.

At the end of that period he asked for an audience of leave, but George the Third was again stricken with insanity and it was not until the Prince of Wales was installed as Regent that the audience of leave was arranged. It took place on the 28th day of February, 1811. In receiving Mr. Pinkney, the Prince Regent professed amicable sentiments towards the country he represented and hoped the differences between the two governments would be amicably settled. Mr. Pinkney replied that he cherished the same desire for an amicable settlement—such a settlement as would preserve the just rights of his country. To this the Prince Regent is reported to have said that he could not look into men's hearts; he could only judge the tree by its fruits.

On Pinkney's return home in June, 1811, he was elected to a seat in the Maryland Senate and on December 11, 1811, he was appointed by Mr. Madison, Attorney General of the United States. After the failure of his endeavors to secure peace by negotiation, he now sought justice by means of war. He became an advocate of that measure, joining his counsel with the counsels of Clay, Calhoun and others in stiffening the sinews of Mr. Madison, who, like Jefferson, hated war and had a passion for peace.

War was declared on June 18, 1812. By a singular coincidence the declaration was drawn by Pinkney, now Attorney General, and communicated to England by Monroe, now Secretary of State, the two envoys who had vainly endeavored to obtain such concessions as would have avoided it. Concessions came at last, but they came too late. When

they reached America war had already been declared. Lord Grenville, in the House of Commons, expressed his indignation that concessions, which ought to have been made in the outset, had been so long delayed that they were useless and like similar delay in the Revolution led to a fatal war.

Pinkney resigned his post as Attorney General 1814, in consequence of an act of Congress requiring that officer to reside at Washington. This was incompatible with his professional engagements at Baltimore, and hence his resignation. In the following year (1815) Baltimore elected him to a seat in the lower house of Congress, and he signalized his service in that body by a speech on the treaty making power, marked by genius, learning and eloquence. The doctrine he asserted in that speech has gone far to determine the action of the government down to the present day. But the question he discussed, and discussed, too, with transcendant ability has not yet been authoritatively settled, unless indeed the practice of the government, in accordance with his views, may be considered to have so settled it. That question is, does the power vested in the President, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators concur, compel Congress *passively* to appropriate money—for example, if the treaty makes such appropriation necessary or requires legislation of any kind in order to give it effect, or may Congress constitutionally, in pursuance of its power to legislate, exercise deliberation, and if it considers a treaty unwise or inexpedient refuse to enact the laws necessary to its execution? Under the Constitution the House of Representatives originates appropriations. May the President and Senate forestall its action by stipulating that appropriations shall be made? Can the House be thus shorn of its legislative power? Can it act only in one way, although its legislative judgment disapproves such action, and believes that it imperils the common defense and general welfare of the people?

Mr. Pinkney, with great power of logic and with great amplitude of illustration, held that the legislative will is bound by the terms of a treaty and if legislative action is required to carry these terms into effect, Congress is constitutionally obliged to take such action. In England, on the other hand, where the power to make treaties is absolutely vested in the Crown, and where Parliament has no power to modify or in any way to change them, yet, when legislative action is required to give effect to them, Parliament may constitutionally refuse such action. And I venture to think that this is the true doctrine.

Mr. Pinkney vacated his seat in the House on being appointed special envoy to Russia and Naples by Monroe, who had succeeded Madison as President. When he returned home from this mission, after an absence of two years, he resumed the practice of his profession. In 1820 he was elected by the Maryland Legislature a Senator of the United States. Here he delivered his great speech on the Missouri Compromise. It was a memorable occasion by reason of the magnitude of the subject discussed, and a memorable scene by reason of the irresistible desire of all classes to hear him. His speech was one of the great events of his epoch. Pinkney's chief labors for the residue of his life were bestowed upon the law. He appeared in nearly all the chief causes argued in the Supreme Court. His vast learning, his energy, his fire, his imagination, his splendid diction and fervid manner always roused and affected his hearers, and the coldest of the judges found it difficult to resist him. His mind was self stimulated. The internal fires were always aglow. He needed no external prick or spur.

Mr. Pinkney was a master of the English language; his enunciation, inflection, and pronunciation were perfect. The late David Paul Brown told me that the lawyers who practiced in the Supreme Court were all under cow to Pinkney, as he expressed it, by reason of his accomplishments in

his mother tongue. He was extremely sensitive to any mistake in its use. The wrong word or the wrong pronunciation cut him like a knife and the lawyers dreaded his criticism. John Randolph had the same sensitiveness as to the King's English. When he lay dying in Philadelphia he heard his physician (Dr. Physic, I think) use the word "impetus," and pronounce it im-*pe*-tus. The dying man turned his eyes towards him and gasped "*im*-pe-tus, doctor, *im*-pe-tus."

Pinkney used metaphor to illustrate and enforce his arguments, and it always expressed the precise thought he wished to convey. He seized his subject, said Judge Story, with comprehension and with the vigor of a giant. His accurate and discriminating law knowledge, Story also tells us, and his cogent logic, gave him superiority over every other man whom he had known. Chief Justice Marshall said he was the greatest man he had ever seen in a Court of Justice. Chief Justice Taney was of the same opinion. "He had," said William Wirt, "an Oceanic mind—he was the most thoroughly equipped lawyer I have ever met in the Courts."

In the great case of McCullough vs. Maryland,* the question was whether Congress could create a corporation (National Bank) and whether the stock of such a corporation could be taxed by a State? Luther Martin, Joseph Hopkinson and Walter Jones appeared for Maryland, and on behalf of that State denied that the power to establish a corporation had been delegated to the United States, and asserted that such power could not be injected into the constitution by implication; that contemporary exposition of the Constitution by its authors and by those who supported its adoption was wholly repugnant to the existence of such a power. Webster and Pinkney represented the bank; Wirt, too, as Attorney General of the United States, appeared in

* 4 Wheaton, 594.

support of its constitutionality. Webster, on behalf of the bank, opened the argument and Pinkney closed it. The great leading principles were stated by Webster with masterly skill. In closing Pinkney substantially enforced the same principles, but with ardor, with enthusiasm, with fervor, with amplification and illustration all his own, captivating the audience and charming and convincing the Court. Wirt and Webster were lost sight of and Pinkney was the hero of the hour. Judge Story describes his argument in a letter to his friend Judge White, of Massachusetts. I will read it to you.

"I never in my whole life," he says, "heard a greater speech. It was worth a journey from Salem to hear it. His elocution was excessively vehement, but his eloquence was overwhelming. His language, his style, his figures, his arguments were most brilliant and sparkling. He spoke like a great statesman and patriot, and a sound constitutional lawyer. All the cobwebs of sophistry and metaphysics, about State rights and State sovereignty, he brushed away as with a mighty besom. Mr. Pinkney possesses beyond any man I ever saw the power of eloquent and illustrative amplification."*

I will now call your attention to one other case of Pinkney's. The case of the "Nereide,"† involving a question of international law. During the War of 1812 between the United States and Great Britain, the "Nereide," a British gunboat mounting sixteen guns, was hired by Manuel Pinto, a merchant of Buenos Ayres, to transport a cargo belonging to himself and others of his countrymen from London to Buenos Ayres. On the passage she was captured by an American privateer, and brought into New York, and both vessel and cargo condemned as lawful prize. From this decree Mr. Pinto appealed to the Supreme Court of the United States. He was there represented by Emmett and Hoffman;

* Story's Life and Letters, Vol. I, p. 325.
† Cranch's Rep., Vol. IX, p. 430.

the captors by Pinkney and Dallas. It was conceded, of course, by Pinkney on the argument that the goods of a neutral on board an unarmed enemy-vessel were exempt from condemnation as prize; but he contended that the neutral character was forfeited if they were placed on board an armed enemy-vessel, inasmuch as the neutral thereby set in motion an agent of hostility.

His argument was a very powerful one and adorned with a splendor of eloquence rarely witnessed in a Court of Justice.

"If this cargo was not infected with the hostile character of its armament, and the contrary idea were personified," said Pinkney, "we shall have neutrality, soft and gentle and defenseless in herself, yet clad in the panoply of her warlike neighbors, with the frown of defiance upon her brow and the smile of conciliation upon her lips; with the spear of Achilles in one hand and a lying protestation of innocence and helplessness enfolded in the other. Nay, if I may be allowed so bold a figure in a mere legal discussion, we shall have the branch of olive entwined around the bolt of Jove, and neutrality in the act of hurling the latter under the deceitful cover of the former.

"Call you that neutrality which thus conceals beneath its appropriate vestments the giant limbs of war and converts the charter-party of the counting-house into a commission of marque and reprisal, which makes of neutral trade a laboratory of belligerent annoyance, which, with a perverse and pernicious industry, warms a torpid serpent into life, and places it beneath the footsteps of a friend with a more appalling lustre on its crest and added venom in its sting; which, for its selfish purposes feeds the fire of international discord, which it should rather labor to extinguish, and in a contest between the feeble and the strong, enhances those inequalities that give encouragement to ambition and triumph to injustice."

Such a powerful impression did Pinkney make on Chief Justice Marshall that it has been said the latter's style even was affected by the eloquence of the orator and reflected something of its glow in the opinion of the Court. Let me quote what he said of Pinkney's argument in the case of the "Nereide."

"With a pencil dipped in the most vivid colors," said the Chief Justice, "and guided by the hand of a master, a splendid portrait has been drawn, exhibiting this vessel and her freighter as forming a single figure, composed of the most discordant materials of peace and war. So exquisite were the skill of the artist, so dazzling the garb in which the figure was presented, that it required the cold investigating faculty which ought always to belong to those who sit on this bench to discover its only imperfection—its want of resemblance."

Although the Court decided the case of "The Nereide" against the contention of Pinkney, yet a contemporary decision by Lord Stowell in the case of "The Fanny" (Dodson's Rep., Vol I, p. 443), and involving the same principle, was decided in conformity with it.

Mr. Pinkney continued his practice in the Supreme Court, although now he was a member of the Senate. At all times the tremendous energy he expended in the preparation and argument of his cases was a great strain upon his splendid physique. In his arguments every nerve and muscle of his body and every power of his mind were at the utmost tension.

When told by a friend on one occasion, that people were surprised that he should give up his splendid practice to go abroad, "Ah!" said Mr. Pinkney, "people do not know what toil, what days and nights my profession demands of me. My bow is always bent. I must go away or it will break." At the session of the Supreme Court at Washington, in 1822, Mr. Pinkney made his last argument. He was

not well, and besides on this particular occasion he was suffering from a cold. He spoke, however, with his usual fire, vehemence and eloquence, but the silver cord was about parting, and the bent bow was about breaking. He suddenly paused and asked the indulgence of the Court while he sat down for a few moments. The lawyers gathered around him and begged him not to go on. The weakness soon passed, however, and he rose and proceeded with his argument.

That finished, he went home to his bed, and to his death. He died on the 25th day of February, 1822. The announcement in Congress and in the Supreme Court that William Pinkney had gone hence to be no more seen caused great and reverential sorrow. His funeral was solemnized under the direction of the Senate, and was attended by a vast multitude, composed of public bodies and citizens. The procession was two miles long, and every hack and every vehicle in Washington of any sort was pressed into service to enable the people to express by their presence on this solmen occasion their love and admiration for this illustrious man.

It is a trite saying that the fame of the lawyer is transient. But Pinkney's name is so linked with great questions of State and great Constitutional issues that I venture to think, so long as the records that enshrine them shall escape the devastations of time, his fame will echo in the generations to come.

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